

ANALYSIS OF AMENDED BILL

Author: Simitian Analyst: Deborah Barrett Bill Number: SB 768
 Related Bills: See Legislative History Telephone: 845-4301 Amended Date: September 2, 2005
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Identity Information Protection Act of 2005

SUMMARY

This bill would limit state entities' use of identity cards containing a device that would enable personal information embedded in the card to be accessed remotely.

SUMMARY OF AMENDMENTS

The September 2, 2005, amendments removed language related to coastal marine finfish aquaculture projects and added language related to the use of radio wave transmission devices and personal information security.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to protect sensitive personal information from potential identity theft.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2006, and would be operative on and after that date.

POSITION

Pending.

ANALYSISFEDERAL/STATE LAW

Current state law allows state agencies to collect personal information on individuals only to the extent it is relevant and necessary to accomplish a purpose of the agency that is authorized by statute or federally mandated. Personal information is to be collected directly from the individual to the extent possible and made available to the individual upon request for inspection for accuracy. Current law provides avenues for taxpayers to correct inaccurate information collected by the state agency. Current law prohibits state agencies from disclosing personal information maintained in their records except in accordance with specific exceptions. The exceptions include disclosing the information to the taxpayer, the taxpayer's authorized representative, other state agencies for the purpose of fulfilling

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their constitutional duties, investigation purposes, or for purposes of qualifying for state sponsored assistance. The exceptions to disclosing personal information are specific and limited.

Current state law permits the disclosure of tax return information to other agencies for tax administration purposes and other state agencies as specified by statute. Unauthorized disclosure of state tax information can be punishable as a misdemeanor.

Current federal law contains similar provisions for the protection of an individual's personal information maintained within a federal agency's system of records. These provisions identify exceptions that permit disclosure of personal information as well as procedures to obtain a copy of personal information, address errors, and account for disclosures made by the agency.

Current federal law permits the disclosure of tax return information to taxing agencies under specified conditions and prohibits the agencies that receive federal information from further disclosing that information to any other agency for any purpose without express IRS approval. Unauthorized disclosure of federal tax information can be punishable as a felony.

THIS BILL

This bill would establish the Identity Information Protection Act of 2005. This bill would require, with exceptions, that state, county, or municipal governments, or agencies thereof, who create or issue identification documents that contain a device that uses radio waves to broadcast personal information or to enable personal information to be scanned remotely to meet certain requirements.

Provisions of this bill are not applicable to identification documents that are part of a system that is operational and in use prior to January 2006. An exception is provided for identification cards that are issued to a person for the limited purpose of facilitating secured access by the identification document holder to a secured public building or parking area. There are numerous other uses that are excepted from this bill's restrictions that are not discussed in this analysis.

This bill provides for sanctions against a person or state entity that knowingly or willfully remotely reads or attempts to remotely read a person's identification document without the knowledge of that person. The punishment can range from imprisonment in a county jail for up to one year, a fine of not more than \$5,000, or both the imprisonment and the fine.

IMPLEMENTATION CONSIDERATIONS

Implementation of this bill would not impact the department's operations or programs since the department does not utilize an identification system that uses radio waves to transmit personal information.

LEGISLATIVE HISTORY

SB 682 (Simitian, 2005) contained identical language regarding the use of remote devices and the security of personal information. SB 682 was held in the Assembly Appropriations Committee.

SB 168 (Bowen, Stats. 2001, Ch. 720) prohibited any person or entity, not including a state or local agency, from using an individual's social security number in certain ways, including posting it

publicly, or requiring it for access to products or services.

SB 25 (Bowen, Stats. 2003, Ch. 907) extended requirements restricting use of social security numbers to state and local agencies, subject to specified exceptions.

PROGRAM BACKGROUND

FTB currently uses a badge system to secure FTB facilities. Each employee is required to wear a badge that contains an electronic device that will identify and record the location and time each individual in the department enters the facility. The badges do not carry personal information but are embedded with a number that when activated will access a secure database controlled by the security staff that will pull up a picture ID and name associated with the card number. Since personal information is not embedded on the badges, and the current badge system does not use radio waves to transmit personal information, this bill will not affect the security practices in place at FTB facilities.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. No comparable statutes prohibiting state use of electronic devices containing personal information were found.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

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